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8 **UNITED STATES DISTRICT COURT**  
9  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 DEBORAH RUSSELL,  
12 individually and on behalf of  
13 others similarly situated,

14 Plaintiff,

15 v.

16 WALMART, INC.,  
17 a Delaware corporation, and  
18 DOES 1 through 50,

19 Defendants.

Case Number:

**3:22-cv-02813-JST**

**FIRST AMENDED COMPLAINT FOR  
RESTITUTION;  
DEMAND FOR JURY TRIAL**

**CLASS ACTION**

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28 **3:22-cv-02813-TSH**

**FIRST AMENDED COMPLAINT FOR RESTITUTION; JURY DEMAND –  
PAGE 1**

1 **JURISDICTION**

2 1. This Court has subject-matter jurisdiction over the claims for relief  
3 asserted herein pursuant to Title 28, U.S.C., Section 1332(d)(2)(B).

4 **VENUE**

5 2. Venue of this civil action is properly fixed in the Northern District of  
6 California, pursuant to Title 28, U.S.C., Section 1391(b)(2); at least a substantial part,  
7 and likely all, of the wrongful conduct which is the subject of this civil action were  
8 planned, directed, and perpetrated within the Northern District of California.  
9

10 **DIVISIONAL ASSIGNMENT**

11 3. Plaintiff is informed and believes, and on such basis avers, that all, or at  
12 least a substantial part, of the events and/or omissions giving rise to the claims  
13 asserted herein occurred within the County of Alameda, California. (*Cf.*: Civil L.R.  
14 3-2(c).)

15 **PARTIES**

16 4. Plaintiff, Deborah Russell (**hereinafter “Plaintiff”**), is an individual  
17 citizen of the State of California.

18 5. Plaintiff is informed and believes, and thereupon avers, that Defendant,  
19 Walmart, Inc. (**hereinafter “Walmart”**), is a corporation organized and existing  
20 pursuant to the laws of the State of Delaware, whose principal place of business is  
21 unknown to Plaintiff.  
22

23 **CLASS ALLEGATIONS**

24 6. The averments of fact which are contained within certain Paragraphs of  
25 this Complaint are made upon information and belief, which may be grounded in  
26 whole or in part upon matter discovered through investigation conducted by the  
27

undersigned counsel.

7. Walmart operates the “Walmart” retail stores, of which there are many situated within the State of California.

8. At all times relevant hereto, and through and including the present time, Walmart has employed many people in its California stores, and they perform different job functions.

9. One employee job function within a Walmart store is called “cashier” (sometimes referred to as “checker”).

10. In earlier times, all the cashiers were regularly hired, their working hours were recorded, and they were paid for their work.

11. At all times relevant, the cashier function has been usually and customarily performed by regularly-employed, paid cashiers; *a fortiori*, cashier services are services of a character usually charged for.

12. Thereafter, Walmart conceived the idea that, if some of Walmart’s customers were to perform (without compensation) work which had theretofore been performed exclusively by Walmart’s regularly-employed, paid cashiers, Walmart could reduce its payroll costs.

13. Walmart then installed customer-operated checkout stands in many of its California stores.

14. Walmart’s customers perform this cashier work alongside Walmart’s paid cashiers; when one looks down a row of checkout stands, one can see paid employees and customers doing the same work, in the same way, and at the same time.

15. The cashier function, whether performed by a regularly-employed, paid cashier, or by a Class Member, is a function that serves only the interests of Defendant; the cashier function facilitates calculation of the amount Defendant proposes to charge Class Members for items they have selected to buy; the cashier

1 function enters data into Defendant's computerized inventory reports; the cashier  
2 function enters data into Defendant's computerized merchandise-ordering system; and  
3 the cashier function collects payments for Defendant as demanded by Defendant.

4 16. The cashier function, whether performed by a regularly-employed, paid  
5 cashier, or by a Class Member, is a requirement imposed by Defendant; Defendant  
6 prescribes the equipment used to perform the cashier function; Defendant does not  
7 permit Class Members to bypass the checkout process entirely.

8 17. While Class Members have a choice whether the cashier function is  
9 performed by a regularly-employed, paid cashier, or by the Class Members' own labor,  
10 Class Members have no choice whether to undergo the cashier function.

11 18. The cashier function is distinct from other functions, such as bagging.  
12 Unlike the cashier function, bagging is not required by Defendant; bagging serves only  
13 the interests of the purchaser; and the purchaser is free to use their own equipment  
14 (*i.e.*, bags), or to bypass bagging entirely.

15 19. The cashier work performed by Walmart's customers is substantially  
16 identical to the cashier work performed by Walmart's paid cashiers; this substantially  
17 identical work includes (but may not be limited to) lifting and physical manipulation  
18 of items of Walmart's inventory held for retail sale in order to present bar codes  
19 thereon to Walmart's laser scanner, for the purpose of facilitating calculation by  
20 Walmart's computerized point-of-sale system of the amount Walmart proposes to  
21 charge the customer for the items the customer has previously selected.

22 20. The items of Defendant's inventory which Class Members lift and  
23 physically manipulate while performing the cashier function are Defendant's property,  
24 and do not become the property of a Class Member until the cashier function has been  
25 completed and payment has been made and accepted.

26 21. The uncompensated work performed by Class Members who use  
27

1 Defendant's customer-operated checkout stands confers direct benefits upon  
2 Defendant, which include but may not be limited to: (a) savings of labor costs  
3 achieved by substituting uncompensated work performed by Class Members for  
4 compensated work performed by regularly-employed, paid cashiers; (b) Class  
5 Members effect data entry into Defendant's computerized inventory system, which  
6 enables Defendant to know how many units of each SKU (*i.e.*, stock-keeping unit) it  
7 should have in stock; and (c) Class Members effect data entry into Defendant's  
8 computerized ordering system, to assist Defendant in ordering stock from its own  
9 distribution centers, and from outside suppliers whose merchandise is delivered  
10 directly to Defendant's stores.

11 22. Plaintiff shops at one or more of Walmart's stores, and, within the time  
12 period relevant to this action, has often performed cashier work without compensation  
13 while operating Walmart's customer-operated checkout stands.

14 23. Defendant derives substantial economic benefit in the form of lower  
15 payroll costs by utilizing the uncompensated work performed by their customers who  
16 operate their customer-operated checkout stands.

17 24. Defendant invites, encourages, and requests its customers to perform  
18 cashier work without compensation, in order to reduce Defendant's payroll costs.

19 25. Because Walmart invites, encourages, and requests its customers to  
20 perform cashier work without compensation, Walmart has been able to, and does,  
21 employ fewer regularly-employed cashiers; this, in turn, contributes to a higher  
22 unemployment rate than would otherwise exist in California, exerts downward  
23 pressure on prevailing wage rates in the retail sector, increases state welfare costs  
24 resulting from that higher unemployment, and promotes the sociological harms that  
25 flow from lack of employment opportunities.

26 26. In July of 2021, retail industry publication *PYMNTS* reported that, "...  
27

1 self-checkout is on the rise ... [and] [g]rocery jobs are down.”<sup>1</sup>

2 27. The same article reports:

3 “To use the labor that they do have more efficiently, many grocers are  
4 having attendants go ‘fishing,’ which means, ... ‘your self-checkout  
5 attendant, encouraging shoppers to come use the self-service and helping  
6 where necessary’.”

7 28. In recent months, Defendant has scheduled fewer regularly-employed  
8 cashier labor hours, with the intention that Class Members will be induced to perform  
9 uncompensated cashier work to avoid Defendant’s longer and longer checkout lines.

10 29. Plaintiff anticipates that evidence obtained on discovery will confirm that  
11 Walmart trains its paid employees to steer its customers toward its customer-operated  
12 checkout stands so that Walmart will derive even more unpaid cashier work from its  
13 customers.

14 30. Defendant has in its actual or constructive possession point-of-sale  
15 system transactional records from which can be ascertained the identities the  
16 customers who have operated Defendant’s customer-operated checkout stands; these  
17 identifiable customers include, but may not be limited to, those who have paid for their  
18 purchases by debit or credit card.

19 31. Plaintiff brings this action on behalf of herself, and on behalf of all others  
20 similarly situated, as a class action pursuant to Rule 23, Fed.R.Civ.P. The class which  
21 Plaintiff seeks to represent are composed of and defined as follows:

22 **Proposed Class Definition:**

23 All persons who have operated a customer-operated checkout stand at  
24 any Walmart store within the State of California at any time within the  
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26 <sup>1</sup> <https://www.pymnts.com/news/retail/2021/the-third-wave-of-self-ser>  
27 [ve-checkout-turns-grocery-stores-into-omnichannel-hubs/](https://www.pymnts.com/news/retail/2021/the-third-wave-of-self-ser)

1 applicable limitations period, limited to those whose identities are  
2 ascertainable (whether from point-of-sale system transactional records of  
3 debit or credit card payments, or by some other reasonably-available  
4 means).

5 32. This action has been brought and may properly be maintained as a class  
6 action pursuant to Rule 23, Fed.R.Civ.P., because there is a well-defined community  
7 of interest in the litigation and the proposed class is ascertainable.

8 33. Plaintiff is unaware of any difficulties that are likely to be encountered  
9 in the management of this action that would preclude its maintenance as a class action.

10  
11 **CLAIM FOR RELIEF**  
12 **(for restitution under theory of quasi-contract and/or unjust enrichment)**  
13 **(Civil Code section 22.2)**  
14 **(by Plaintiff and the Plaintiff Class, against Defendant, Walmart)**

15 34. The averments contained in paragraphs 1 through 33 hereof are  
16 incorporated herein by reference.

17 35. Plaintiff and the members of the Plaintiff Class have conferred benefit  
18 upon Defendant, and have done so by providing their own labor as a substitute for  
19 labor which traditionally has been provided by, and which otherwise would have been  
20 provided by, Defendant's regularly-employed, paid cashiers; the benefit conferred  
21 upon Defendant includes substantial monetary benefit.

22 36. Defendant knowingly accepted the benefits conferred by Plaintiff and the  
23 members of the Plaintiff Class, and did so as part of Defendant's plan to reduce  
24 Defendant's own labor costs at the expense of:

- 25 a. Plaintiff and the members of the Plaintiff Class (from whom Defendant  
26 has obtained uncompensated labor);  
27 b. Defendant's current regularly-employed, paid cashiers (whose scheduled  
28 hours are reduced); and

1 c. members of the public who would otherwise have employment  
2 opportunities in retail (which are often entry-level positions which allow  
3 Californians to develop skills which will benefit them for their entire  
4 working lives).

5 37. According to news media reports, Plaintiff and the members of the  
6 Plaintiff Class are at risk of criminal prosecution if they make an honest mistake while  
7 operating a customer-operated checkout stand (“Group 2”), and even if they don’t  
8 make any mistake at all and operate the customer-operated checkout stand *perfectly*  
9 (“Group 3”):

10 <https://www.dailymail.co.uk/video/dailymailtv/video-2742579/Why-a>  
11 [void-using-self-checkouts.html](https://www.dailymail.co.uk/video/dailymailtv/video-2742579/Why-a)

12 38. Walmart neither informs, nor warns, Plaintiff and the members of the  
13 Plaintiff Class that they are at risk of being falsely accused of a crime when they  
14 operate Walmart’s customer-operated checkout stands, which would impose expense  
15 and emotional distress from having to defend against a false allegation of wrongdoing.

16 39. It would be inequitable for Defendant to retain the benefit conferred by  
17 Plaintiff and the members of the Plaintiff Class without paying for its value, for  
18 reasons which include, but may not be limited to:

19 a. Defendant has invited, encouraged, and requested Plaintiff and the  
20 members of the Plaintiff Class to perform uncompensated labor through  
21 the above-described practice of “fishing”; and

22 b. Defendant has scheduled fewer regularly-employed cashier labor hours,  
23 with the intention that Class Members will be induced to perform  
24 uncompensated cashier work to avoid Defendant’s longer and longer  
25 checkout lines.

26 40. The facts set forth hereinabove establish that Plaintiff and the members  
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1 of the Plaintiff Class are entitled to judgment over and against Defendant, Walmart,  
2 awarding compensation, reimbursement, indemnification, and/or reparation for the  
3 benefits Defendant has derived from labor performed by Plaintiff and the members of  
4 the Plaintiff Class.

5 WHEREFORE, Plaintiff and the Plaintiff Class request relief as set forth  
6 hereinbelow.

7  
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff and the Plaintiff Class request judgment over and  
10 against Defendant, Walmart, awarding restitution under the theory of quasi-contract  
11 and/or unjust enrichment, and/or such other legal theory as the Court may find  
12 applicable to the facts proved at trial, in relation to benefits conferred as described  
13 hereinabove, and such other relief, at law or in equity, to which this Court finds  
14 Plaintiff and the Plaintiff Class justly entitled.

15 Dated: 17 February 2023

Respectfully submitted,

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26 [3 RW - COMPLAINT (FAC) filed 17FEB23.wpd]  
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**JURY DEMAND**

Plaintiff, individually and on behalf of others similarly situated, hereby demands trial by jury of all issues triable by a jury, pursuant to applicable law, including, but not necessarily limited to the Seventh Amendment to the United States Constitution.

Dated: 17 February 2023

Respectfully submitted,

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[3 RW - COMPLAINT (FAC) filed 17FEB23.wpd]